DIVISION ONE
FILED: 02-25-2010
PHILIP G. URRY, CLERK
BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CHANDLER UNIFIED SCHOOL DISTRICT NO. 80, a political subdivision of the State of Arizona, Plaintiff/Appellee, and CITY OF CHANDLER, a municipality of the State of Arizona, Defendant/Appellee, v. CHANDLER IMPROVEMENT COMPANY, a defunct Arizona corporation, Defendant/Appellant.	No. 1 CA-CV 08-0445 No. 1 CA-CV 08-0611 (Consolidated) DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2004-008264
CV 2005-016809

The Honorable Janet E. Barton, Judge

AFFIRMED

Greenburg Traurig, LLP Phoenix
By Pamela M. Overton
Julie R. Barton
Kristine Kunkel Campbell
Attorneys for Plaintiff/Appellee

Chandler City Attorney's Office Chandler
By Glenn A. Brockman, Assistant City Attorney
James R. Cairns, III
Attorneys for Defendant/Appellee

Francis J. Slavin, PC Phoenix
By Francis J. Slavin
Ellen B. Davis
Attorneys for Defendant/Appellant

D O W N I E, Judge

¶1 Chandler Improvement Company ("CIC") appeals the superior court's judgment in condemnation, which determined that CIC had no ownership interest in certain property. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 1912, the Mesa Improvement Company ("MIC") platted acreage in an unincorporated area of Maricopa County. On June 22, 1912, MIC recorded the "Map of the Townsite of Chandler" ("Plat") with the Maricopa County Recorder. The Plat reflected, *inter alia,* the creation of individual lots, streets, alleys, and parks.[1] The Plat expressly made certain dedications, stating:

> MESA IMPROVEMENT COMPANY . . . being the owner in fee . . . has caused the said property to be surveyed, subdivided and platted, as shown on the accompanying plat, which said premises shall hereafter be known

[1] In using the term "roadways" in this decision, we refer to both streets and alleys. *See, e.g.,* A.R.S. § 28-7201(4)(2004) (defining "roadway" to include both streets and alleys).

> as Chandler, and hereby declares that said plat sets forth the location and gives the dimensions of all lots, blocks, streets, avenues, Roads and Alleys constituting the said Chandler, and that each lot, tract and block, and each street avenue and road shall be known by the number or letter or name thereon given to each respectively in said plat, and that *the aforesaid Corporation hereby dedicates to the public use all streets, avenues, roads and alleys* thereon shown, *but expressly saving and reserving to the said Corporation its successors and assigns the right to lay, construct and maintain, service utility pipes, ducts, conduits, electric light and telephone lines, and street Railways* upon and within all said streets, avenues, alleys and roads.

(Emphasis added.)

¶3 In 1913, MIC changed its name to Chandler Improvement Company. Thereafter, CIC sold several of the platted lots to individual owners. Deeds for some of these lots stated that "title to all streets and alleys bordering on said parcel of land is reserved to and remains vested in [CIC], its successors and assigns." CIC maintained the dedicated roadways until the Town of Chandler was incorporated in 1920.[2] CIC dissolved as a corporate entity in 1944.

¶4 To facilitate improvements to the Chandler High School campus, the governing boards of the City of Chandler ("City") and Chandler Unified School District No. 80 ("CUSD") authorized an exchange and/or vacation of certain roadways. On April 28,

[2] The City of Chandler is now an Arizona municipal corporation.

2004, CUSD filed a condemnation complaint against "Chandler Improvement Company" (the "condemnation action"). The complaint alleged CIC had an ownership interest in roadways that were needed to expand and improve Chandler High School.[3] Pursuant to the parties' stipulation, the court awarded CUSD immediate possession of the property.

¶5 For some time thereafter, the litigation proceeded based on an assumption that CIC had an ownership interest in the roadways and that the only disputed issue was the amount of compensation CUSD must pay. However, in October 2005, CUSD filed a separate quiet title complaint against CIC (the "quiet title action"). CUSD alleged, *inter alia,* that the "Chandler Improvement Company" named in the condemnation action was not the "Chandler Improvement Company" that recorded the Plat and dedicated the roadways. CUSD further alleged that the named defendant in the condemnation action had no ownership interest in the subject property. The condemnation and quiet title actions were consolidated before Judge Barton.

¶6 CIC moved to dismiss the quiet title action. CUSD subsequently filed a Motion for Summary Judgment Regarding the Ownership Issue. CUSD argued that the "Chandler Improvement Company" named in the condemnation action had no ownership

[3] CUSD learned through a title search that CIC had a potential interest in the property.

interest in the subject property and that the "Chandler Improvement Company" that recorded the Plat and dedicated the property had dissolved in 1944, while the defendant bearing the same name incorporated in 1979.

¶7 CIC did not dispute the factual underpinnings of CUSD's motion, but argued "the new Chandler Improvement Company believed it was the reincarnation of the original company and the rightful successor to all of its interests." CIC further contended that the quiet title action should be dismissed because CUSD was not claiming superior title to the roadways.

¶8 The court held a hearing regarding CIC's motion to dismiss and CUSD's motion for summary judgment. It dismissed the quiet title action, finding CUSD was not claiming superior title to the property, but was instead seeking a determination that the named defendant lacked any interest in the roadways. The court requested additional briefing regarding CUSD's motion for summary judgment and reset oral argument on that motion.

¶9 The parties submitted supplemental briefing. At oral argument on March 27, 2006, the Chandler Improvement Company named in the condemnation action conceded that it had "no right, title or interest" in the subject property. Thus, the superior court granted CUSD's motion for summary judgment "as it pertains to the Chandler Improvement Company that was actually served with the complaint." The court ruled that the heirs to the

original CIC could be named as defendants in the condemnation action.

¶10 CUSD filed an amended complaint, naming as defendants the original Chandler Improvement Company, its heirs, successors, and assigns, as well as the City. The amended complaint alleged MIC made an irrevocable dedication of the roadways in 1912 and that fee ownership of the property vested in the City. The complaint further alleged the named defendants (other than the City) had no ownership interest in the property.

¶11 All parties moved for summary judgment. CUSD and the City argued the City held fee simple title to the roadways based on MIC's 1912 dedication. All parties agreed that section 611 of the 1901 Arizona Territorial Code ("Code") applied to the dedication. Indeed, CIC stated:

> The parties agree that § 611 of the 1901 Territorial Code is controlling. Despite the fact that the City spends a good portion of its brief establishing that this was a statutory dedication, rather than the common law dedication, CIC does not dispute the point.

CIC maintained, however, that MIC's dedication under Code § 611 conveyed only a fee simple determinable and that CIC retained an interest in the roadways in the event they ceased to be used by the public.

¶12 After conducting a hearing regarding the motions for summary judgment, the court issued an unsigned minute entry

dated February 13, 2007, ruling that CIC had no cognizable interest in the subject property. The court noted that all parties agreed the 1912 recordation "resulted in a statutory dedication of the Subject Property," although the City received only a "qualified fee." However, under a subsequently enacted statutory scheme governing disposition of property dedicated to public use, Arizona Revised Statutes ("A.R.S.") sections 28-7201 to -7215 (2004), the court concluded that CIC had no reversionary interest upon abandonment of the roadways.

¶13 The court denied CIC's motion for reconsideration. After initially conflicting forms of judgment were lodged, the City and CUSD stipulated to entry of a judgment in condemnation, noting that CIC was the only other party to the litigation, and the court had previously determined it had no interest in the property.

¶14 At a December 17, 2007 hearing to consider the proposed judgments, the court learned CIC had filed a separate lawsuit regarding other roadways falling within the 1912 Plat, and that case (with dispositive motions) was pending before Judge Buttrick. Judge Barton stated she would confer with Judge Buttrick before determining how to proceed. Judge Barton also indicated she was considering revising her earlier ruling to reflect that CIC had no ownership interest in the roadways, without specifying the precise legal basis for that conclusion.

¶15 In January 2008, CIC filed an Amendment to Prior Pleadings in Light of Contrary Controlling Authority. CIC asserted that, although it previously agreed Code § 611 applied and that MIC made a statutory dedication in 1912, further research indicated the dedication was in fact a common law dedication under Code §§ 4098 and 4099 that did not pass fee ownership to the City. According to CIC, the earlier ruling that A.R.S. § 28-7205 defeated any reversionary interest could not stand because CIC actually held a fee interest in the roadways.

¶16 Meanwhile, in the related litigation, Judge Buttrick ruled that Code §§ 607 to 611 applied to the 1912 dedication and that fee to the roadways passed from MIC to the county initially and then to the Town of Chandler when it incorporated. Judge Buttrick noted that neither the Plat nor the Code referenced any reversionary interest and concluded that, at most, the "in trust" language of Code § 611 might grant standing to the public to challenge the transfer of ownership from the City, but CIC lacked standing to assert that challenge. Judge Buttrick concluded CIC had no cognizable interest in the roadways at issue in the case before him.

¶17 Judge Barton set a hearing for March 20, 2008, and directed the parties to explain "why the ruling entered by Judge Buttrick . . . is not equally applicable to the facts and

circumstances of this case." On March 20, Judge Barton signed a judgment in condemnation, stating, *inter alia*:

> - CIC had no "right, title, claim or interest in the subject property."
>
> - CUSD "shall have judgment condemning a fee simple interest in and to the subject property."
>
> - The only party with a compensable interest in the property was the City of Chandler.
>
> - CUSD and the City, "having taken steps and made arrangements under applicable Arizona statutes to dispose of Chandler's interest in the subject property through two separate actions, one being a roadway exchange and the other an alley vacation, no damage award will be assessed and paid to Defendant Chandler provided that said roadway dispositions are completed within a reasonable period of time, not to exceed 60 days."
>
> - If the roadway dispositions were not completed within sixty days, the City had thirty days to "move that this action be reopened for the sole purpose of determining the amount of damages to be awarded to Defendant Chandler for its interest in the subject property."
>
> - Once CUSD files a Satisfaction of Judgment, the court will enter a Final Order of Condemnation, vesting fee simple interest in the property in CUSD.
>
> - The $8000 bond posted by CUSD would be released to "Pamela D. Overton, Esq., for and on behalf of Plaintiff CUSD, the entirety of the cash bond, plus all legal interest that has accrued thereon from the date of deposit through the date of release

at the rate of 10% as provided by A.R.S. §§ 12-1123(B) and 44-1201."

¶18 CIC timely appealed. On June 4, 2008, CUSD filed a Notice of Lodging Amended Judgment in Condemnation. CUSD sought to amend the judgment to allow the bond to be delivered to anyone at attorney Overton's firm and to delete the reference to a specific interest rate in favor of the statutory rate. CIC objected, but the court signed the amended judgment. CUSD filed a Notice of Lodging Second Amended Judgment in Condemnation, seeking to amend the judgment to replace the reference to legal interest on the bond to "interest accrued." The court signed the second amended judgment. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

DISCUSSION

¶19 Summary judgment may be granted when "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(c). In reviewing a motion for summary judgment, we determine *de novo* whether any genuine issues of material fact exist and whether the trial court properly applied the law. *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, ¶ 4, 7 P.3d 136, 139 (App. 2000). We view the facts and the inferences to be drawn from those facts in the light most favorable to the party

against whom judgment was entered. *Prince v. City of Apache Junction*, 185 Ariz. 43, 45, 912 P.2d 47, 49 (App. 1996).

¶20 At the outset, we reject CIC's contention that the superior court entered an invalid contingent judgment, as well as its challenges to the two amendments to the judgment. CIC lacks standing to assert these claims. "An appeal may be taken by any party aggrieved by the judgment." ARCAP 1. A party may appeal, however, only from that part of the judgment by which it is aggrieved. *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 347, ¶ 8, 160 P.3d 223, 226 (App. 2007) (citation omitted). A party is aggrieved if the judgment "denies that party some personal or property right or imposes on that party some substantial burden or obligation." *In re Estate of Friedman*, 217 Ariz. 548, 551, ¶ 9, 177 P.3d 290, 293 (App. 2008) (citations omitted). CIC is not aggrieved by the alleged defects in the judgments. The superior court determined CIC had no interest in the subject property–-a finding we affirm.[4]

[4] In any event, we do not find an improper contingent judgment. In general, a judgment should not be conditioned upon a contingency. *Peterson v. Overson*, 52 Ariz. 203, 205, 79 P.2d 958, 959 (1938). Even where a judgment is in the alternative or conditional, it is not improper "if it is of such a nature that it may be determined therefrom definitely what rights and obligations pertain to the respective parties." *Id.* at 206, 79 P.2d at 959. The judgment determined that CIC had no interest in the subject property, that the City was the only entity entitled to compensation, and that CUSD would receive a final order in condemnation pursuant to either the land exchange with

1. Common Law or Statutory Dedication?

¶21 "Dedication is the intentional appropriation of land by the owner to some proper public use." *Allied Am. Inv. Co. v. Pettit,* 65 Ariz. 283, 287, 179 P.2d 437, 439 (1947) (citations omitted). Property may be dedicated pursuant to a statute (a so-called "statutory dedication") or by action of the common law (a "common law dedication"). *Pleak v. Entrada Prop. Owners' Ass'n*, 207 Ariz. 418, 421, ¶¶ 6, 8, 87 P.3d 831, 834 (2004). Whether by common law or by statute, a dedication, once perfected, is irrevocable. *Thorpe v. Clanton*, 10 Ariz. 94, 99-100, 85 P. 1061, 1062 (Ariz. Terr. 1906).

¶22 When a common law dedication occurs, the public acquires an easement to use the property for the specified purpose, but fee ownership remains with the dedicator. *Pleak*, 207 Ariz. at 421, ¶ 8, 87 P.3d at 834. A common law dedication is effected when a landowner surveys land into lots, streets and squares, records the plat, and sells lots with reference to the plat. *Yuma County v. Leidendeker*, 81 Ariz. 208, 213, 303 P.2d 531, 535 (1956) (citation omitted). To effect a common law dedication, "[n]either a written grant nor any particular words, ceremonies, or a form of conveyance, are necessary to render the act of dedicating land to public uses . . . . Anything which

---

the City or payment of compensation. The judgment sufficiently defined the rights and obligations of the parties.

fully demonstrates the intention of the donor and the acceptance by the public works the effect." *Allied,* 65 Ariz. at 287, 179 P.2d at 439.

¶23 A statutory dedication, on the other hand, results in fee to the dedicated property passing to the county, city, or town. *Pleak,* 207 Ariz. at 424 n.3, ¶ 25, 87 P.3d at 837 n.3. Where the grantor plats land and dedicates portions of it in accordance with the requirements of a statute, it is a "statutory dedication." *See, e.g., Allied,* 65 Ariz. at 289, 179 P.2d at 440-41; *Moeur v. City of Tempe*, 3 Ariz. App. 196, 199, 412 P.2d 878, 881 (1966). *Cf. Thorpe,* 10 Ariz. at 99, 85 P. at 1061-62 (noting that, when the townsite of "Sidney" was filed, there was "no statute in force in the territory relating to the dedication of streets and alleys"; hence, a common law dedication occurred).

¶24 We hold that MIC made a statutory dedication of the roadways at issue. Title 11, Chapter 9 of the Code is titled "Towns" and includes Article XI, titled "Of the Survey and Recording of Town Plats." This article provides, in pertinent part:

> 607. (Section 1.) Whenever any city, town or village, or an addition to any city, town or village, shall be laid out, the proprietors of the city, town or village, or addition laid out, shall cause to be made an accurate plat or map thereof, setting forth:

First. All streets, alleys, avenues and highways and the width thereof.

Second. All parks, squares and all other grounds reserved for other uses, with the boundaries and dimensions thereof.

Third. All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of such lots.

608. (Sec. 2.) Such maps shall be acknowledged by the proprietor or some person for him, duly authorized thereunto by deed, before some officer authorized to take acknowledgement of deeds, and a copy thereof, so acknowledged, shall be filed in the office of the county recorder, and also in the office of the clerk of such town or city.

. . . .

611. (Sec. 5.) Upon the filing of any such map or plat, the fee of all streets, alleys avenues, highway, parks and other parcels of ground reserved therein to the use of the public, shall vest in such city or town, if incorporated, in trust, for the uses therein named and expressed, or if such town be not incorporated, then in the county until such town shall become incorporated, for the like uses.

612. (Sec. 6.) All additions to any city or town shall be surveyed and platted, and a map thereof be submitted to the common council and such map shall not be filed and recorded, as provided in this article, until the same shall have been approved by said common council.

1901 Ariz. Terr. Code §§ 607 to 612.

¶25 In dedicating the roadways, MIC complied with these Code provisions. As noted *supra,* CIC initially conceded as much, specifically relying on Code § 611 and acknowledging that MIC made a statutory dedication in 1912.

¶26 As contemplated by Code §§ 607 and 611, the 1912 Plat "laid out" the Town of Chandler. Because the Town was not yet incorporated, fee to the dedicated roadways vested in Maricopa County until the Town incorporated in 1920, when it passed by operation of law to the Town. *See also Moeur,* 3 Ariz. App. at 198-99, 412 P.2d at 880-81.[5]

¶27 CIC's reliance on *Leidendeker* is unpersuasive. In *Leidendeker,* the court held that land not contiguous to or within the limits of a city or town when a plat was recorded did not fall within the definition of "addition" under Code §§ 607 to 611. 81 Ariz. at 212-13, 303 P.2d at 535. It found Code §§ 4098 and 4099 were more general statutes, applicable where landowners platted land into townsites, additions, and subdivisions, and thus encompassed noncontiguous land like the property at issue. *Id*. *Leidendeker* did not involve a plat

[5] We disagree with CIC's contention that applying Code § 611 is inconsistent with Code § 3990. We see no conflict between having dedicated streets to unincorporated towns with less than 500 persons vest in the county pursuant to Code § 611 and having existing streets in unincorporated towns with more than 500 persons under the control of the county pursuant to Code § 3990. Section 3990 does not limit the county's authority to *only* roadways in towns of more than 500 persons.

laying out a contemplated town, and the decision did not equate a dedication under Code §§ 4098 to 4099 with a common law dedication. Indeed, the court expressly concluded a statutory dedication had been perfected.[6] *Id*. at 215, 303 P.2d at 536.

¶28 *Allied* also supports our conclusion. In that case, the court considered whether a block labeled "Park" on a recorded plat had been dedicated to public use. 65 Ariz. at 285, 179 P.2d at 437-38. The property was "not within any city or town," and "[n]o affirmative steps were taken by the county to accept the dedication." 65 Ariz. at 285, 179 P.2d at 438. There was no express dedication language for the park, as opposed to roadways, which were expressly dedicated in the same plat. *Id.* The court applied the successor statute to Code § 611 and found a statutory dedication, stating, "By the statutes in effect at the time the dedication was made, the fee in the dedicated property passed to the county in trust for the public and for the uses described." *Id*. at 290, 179 P.2d at 441. *See also Edwards v. Sheets,* 66 Ariz. 213, 218, 185 P.2d 1001 (1947) (finding that, "[b]y the statutes in effect at the time the

[6] In considering whether the dedication had been completed, *Leidendeker* looked to the common law, noting that Code §§ 4098 and 4099 "contemplate the common law modes of dedication." 81 Ariz. at 213, 303 P.2d at 535. Similarly, in *Pleak,* the court took note of cases involving statutory dedications in analyzing whether a common law dedication occurred. 207 Ariz. at 424 n.3, ¶ 25, 87 P.3d 837 n.3. Neither decision, however, supports the notion that a dedication under Code §§ 4098 and 4099 is a common law dedication.

dedication was made, the fee in the dedicated property passed to the county in trust for the public and for the uses described"). The statutes at issue in *Allied* are identical in relevant respects to Code §§ 4098 and 611.

¶29 CIC argues extensively that the 1912 dedication was made pursuant to Code §§ 4098 and 4099, not §§ 607 to 612. Under either scheme, though, a statutory dedication would exist. When a statutory dedication occurs under Code § 4098, "the fee passe[s] from the dedicator, differing in this respect from a common-law dedication where the fee remains with the dedicator subject to the public's use for the dedicated purpose." *Moeur*, 3 Ariz. App. at 199, 412 P.2d at 881. Like Code § 611, sections 4098 and 4099 lack any language suggesting that a dedicator retains some type of reversionary interest.

¶30 We conclude the 1912 dedication was a statutory dedication whereby fee passed from MIC to the county initially and, by operation of law in 1920, to the Town of Chandler.

2. Fee Simple Determinable or Fee Simple Absolute?

¶31 CIC argues that, even if it made a statutory dedication, and even assuming Code § 611 applies, MIC conveyed only a fee simple determinable and not fee simple absolute. We conclude otherwise.

¶32 In interpreting a statute, our goal is to determine and give effect to legislative intent. *Mail Boxes, Etc., U.S.A.*

v. Indus. Comm'n, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). To that end, we look first to the language of the statute. *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.,* 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994). If the statutory language is unambiguous, we must give it effect and not resort to other rules of statutory construction in its interpretation. *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991) (citations omitted). If the legislative intent is not clear from the statutory language, we consider other factors, such as the context of the statute, the subject matter, its historical background, its effects and consequences, and its spirit and purpose. *Wyatt v. Wehmueller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991) (citation omitted). Statutory interpretation is a legal issue that we review *de novo*. *State Comp. Fund v. Superior Court (Hauser)*, 190 Ariz. 371, 374-75, 948 P.2d 499, 502-03 (App. 1997) (citation omitted).

¶33 Code section 611 provided that, upon the filing of a plat, "the fee" to roadways "shall vest in such city or town, if incorporated, in trust, for the uses therein named and expressed, or if such town be not incorporated, then in the county until such town shall become incorporated, for the like uses." We disagree with CIC's contention that the "in trust" language means that only a fee simple determinable was conveyed.

¶34 A "fee simple determinable" is an estate in real property that is subject to automatic expiration upon the occurrence of a stated event. The limitation on the estate is generally shown by words such as "unless," "until," "so long as," "during," or "while" in the conveying instrument. The intent that the estate expire must be express; a statement that the conveyance be for a certain purpose is generally not sufficient to create a fee simple determinable. *Lacer v. Navajo County*, 141 Ariz. 396, 400, 687 P.2d 404, 408 (App. 1983); *City of Tempe v. Baseball Facilities, Inc.*, 23 Ariz. App. 557, 560, 534 P.2d 1056, 1059 (1975). Where a fee simple determinable is created, the grantor enjoys the possibility of reverter upon the occurrence of the event stated in the conveyance. *City of Tempe*, 23 Ariz. App. at 560, 534 P.2d at 1059.

¶35 Although the foregoing principles have typically been applied to conveyances by deed, we find them relevant in interpreting the Code. The Code lacks any language suggesting that, upon occurrence of a stated event, fee to the dedicated property reverts to the grantor. Section 611 reflects that the fee is vested for the purposes dedicated, but it does not declare that the fee vests only "so long as" or "while" the dedicated property is used for a particular purpose. The 1912 dedication similarly lacks any language indicating that the fee will revert to the dedicator upon the occurrence of a particular

event.[7] *Cf. Pleak,* 207 Ariz. at 425, 87 P.3d at 838 ("If developers wish to avoid the consequences about which Entrada today complains, they need only exercise greater care in drafting dedicatory language regarding the scope or location of roadway easements in plats . . . .").

¶36 The Code's use of the words "in trust" does not establish that MIC conveyed something less than fee simple absolute. A "trust" has been defined as "any arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit." Black's Law Dictionary 1508 (6th ed. 1990). A trustee holds title to the property subject to an obligation to use the property for the benefit of another. *Id*. The words "in trust" in the Code ensure that, while the City holds title, it does so as trustee for the benefit of the public. *Cf. Thorpe,* 10 Ariz. at 103, 85 P. at 1063 ("It may be that all the streets and alleys which appear upon a map or plat and according to which the owner has sold and conveyed lots are thereby irrevocably dedicated to the public; yet only such persons as may be injured in an especial

[7] The only property interest MIC reserved was an easement for the maintenance and construction of utilities--activities CIC neither performs nor seeks to perform in this action. In contrast, CIC dedicated other property to Chandler in 1921, restricting its use by specifying that "said premises shall not be used for other than public park purposes."

manner by the obstruction or closing of such streets have a right in equity to enforce the dedication.").

¶37 Both sides cite cases from other jurisdictions that interpret various dedication statutes--some similar to Arizona's Territorial Code, and some dissimilar. In the final analysis, these out-of-state authorities are largely unhelpful given the wording of our Code, the fact pattern presented, and the availability of in-state guidance. *See, e.g., Moeur,* 3 Ariz. App. at 199, 412 P.2d at 881 (holding that the effect of filing a plat map under Code § 611 was to "convey the fee in the streets . . . in trust for the public . . . . Consequently, the fee passed from the dedicator, differing in this respect from a common-law dedication where the fee remains with the dedicator subject to the public's use for the dedicated purpose."); *Allied,* 65 Ariz. at 290, 179 P.2d at 441 ("By the statutes in effect at the time the dedication was made, the fee in the dedicated property passed to the county in trust for the public and for the uses described. In this respect the dedication was different from a dedication at common law where the effect was that the public simply acquired the use for the purposes for which it was dedicated, and the fee remained with the dedicator.").

¶38 We conclude that, pursuant to Code § 611, MIC's 1912 dedication conveyed fee simple absolute. We thus need not

resolve whether A.R.S. § 28-7205(3) would defeat CIC's claim to a reversionary interest in the roadways.

3. Effect of CIC's Deed Reservations

¶39 As noted *supra,* deeds for certain lots CIC sold stated that "title to all streets and alleys bordering on said parcel of land is reserved to and remains vested in [CIC], its successors and assigns." However, based on our determination that CIC had no ownership interest in the roadways after the 1912 dedication, we conclude these subsequent deed reservations were of no effect. Once a public dedication of land is complete, the dedicator has "no further control over it." *Evans v. Blankenship,* 4 Ariz. 307, 315, 39 P. 812, 813 (Ariz. Terr. 1895) (noting that once a dedication of land is complete, the dedicator has "no further control over it"). An individual can convey no better title to property than that which he himself possessed. *See Simpson v. Shaw,* 71 Ariz. 293, 297, 226 P.2d 557, 560 (1951); *see also Torrey v. Pearce*, 92 Ariz. 12, 16, 373 P.2d 9, 12 (1962) (recognizing that a grantor may convey title to a public roadway if and to the extent the grantor owns the underlying fee).

CONCLUSION

¶40 For the foregoing reasons, we affirm the judgment of the superior court.

/s/
MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/
PATRICK IRVINE, Judge

/s/
MAURICE PORTLEY, Judge